

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Andrey Zagrebelny,  
Jia Zhou, Yun Wen Zhang,  
and Zuhair Abudaya,

Civil No. 07-1682 (PAM/JSM)

Plaintiffs,

v.

**ORDER**

Denise Frazier, District Director,  
United States Citizenship and  
Immigration Services ("USCIS");  
Emilio T. Gonzalez, Director, USCIS;  
and Robert Mueller, Director, Federal  
Bureau of Investigation,

Defendants.

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This matter is before the Court on the Report and Recommendation ("R&R") of Magistrate Judge Janie S. Mayeron dated February 19, 2008. In the R&R, Magistrate Judge Mayeron recommended that this Court deny Defendants' Motion to Dismiss.

Defendants filed objections to the R&R, contending that the Magistrate Judge erred by failing to distinguish between Defendant Mueller of the FBI and the USCIS Defendants. Defendants apparently do not otherwise take issue with the R&R's conclusion that this Court has subject matter jurisdiction over Plaintiffs' challenges to the lengthy delays in processing their applications for citizenship.

Defendants are incorrect that the R&R did not distinguish between the FBI and the USCIS. Indeed, the R&R extensively discussed the duties of the respective agencies, and noted Defendants' cursory argument that the FBI's function in the citizenship process is

discretionary.<sup>1</sup> (R&R at 11 n.4, citing Defs.’ Supp. Mem. at 22.) The R&R also noted that Defendants repeatedly admitted that “the FBI is obliged to complete background checks.” (Id., citing Defs.’ Supp. Mem. at 30.)

The Court agrees with Magistrate Judge Mayeron that the FBI has a “mandatory, non-discretionary duty to complete the background checks” that subjects the FBI’s role in the naturalization process to judicial review. (Id.) The Court therefore overrules the objections and adopts the R&R in its entirety.

Accordingly, **IT IS HEREBY ORDERED** that:

1. The Report and Recommendation (Docket No. 22) is **ADOPTED**; and
2. Defendants’ Motion to Dismiss (Docket No. 11) is **DENIED**.

Dated: March 4, 2008

s/ Paul A. Magnuson  
Paul A. Magnuson  
United States District Court Judge

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<sup>1</sup> At no point in their Memorandum did Defendants argue that the FBI’s allegedly discretionary role means that the Court lacks subject matter jurisdiction over the FBI under the All Writs Act or the Administrative Procedures Act. The Court also notes that Defendants chose not to file a reply memorandum in support of their Motion to Dismiss, which might have more fully elucidated this matter for the Magistrate Judge.